(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CR. APPEAL NO. 530 OF 1990.

Govind Gokhale, son of Anant Gokhale, aged 38 years, resident of behind Union Bank, Power House, Bhilai, PS Chhavani, Distt.Durg.MP .. APPELLANT (IN JAIL)

VS.

THE STATE OF M.P. .. NON-APPLICANT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

CONVICTION:	SENTENCE:
U/s 376 IPC.	.. R.I.for 7 years.

.. .. ..

(37)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.530/1990

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh,J.

Govind Gokhale

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

PRESENT: -

Shri S. C. Verma, learned counsel for the accused-appellant.
Shri Parag Kotecha, Panel Lawyer for the State.

ORAL JUDGMENT
(Delivered on 13-07-2006)

This appeal is directed against the judgment dated 10-05-1990 delivered by Shri P.N.S.Chouhan, Sessions Judge, Durg in Sessions Case No.103/1989 whereby the appellant was convicted under Section-376 of the IPC and was sentenced to R.I. for 7 years.

2. Briefly stated the prosecution story is that the prosecutrix, aged about 32 years was working as maid servant at the house of the appellant situated at Power House, Bhilai. On 26-06-1987 at about 11 A.M., while she had gone to the house of the appellant for work, the appellant held her inside his house and pushing her on a cot committed rape on her. At that time, wife of the appellant returned home. The appellant opened the door. The prosecutrix went out of the house without narrating the incident to the wife of the appellant. The prosecutrix however narrated the incident to

Phulkunwar Bai PW-2 and lodged F.I.R. Ex.P-5 at Police Station-Chhawani at 2.05 P.M. on the same day. On being sent for medical examination, Dr. Smt. Shobha Behar PW-1 examined the prosecutrix but did not find any injury either external or on her private parts. She opined that the prosecutrix was habituated of sexual intercourse and no definite opinion regarding sexual intercourse having been committed on the prosecutrix could be given. Vaginal slides of the prosecutrix were prepared and sealed. Chemical analysis of the vaginal slides was advised. During investigation on the same day, Saya worn by the prosecutrix having semen like stains was seized from the prosecutrix vide Ex.P-6 and sealed. One Shawl was also seized from the appellant on 27-06-1987 vide Ex.P-7. The aforesaid articles i.e. saya, vaginal slides and Shawl were sent for chemical analysis to the Forensic Science Laboratory. Vide report Ex.P-10, presence of semen and human spermatozoa was confirmed only on the vaginal slides and saya of the prosecutrix. The appellant was medically examined by Dr. P. Pandey, PW-3 who found the appellant capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted under Section-376 of IPC.

3. The appellant abjured the guilt, pleaded false implication by the prosecutrix and led no evidence in defence. The prosecution examined 5 witnesses. Relying upon the evidence led by the prosecution and finding the testimony of the prosecutrix worthy of credence, learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. (Supra)

4. Shri S.C.Verma, learned counsel for the appellant has assailed the impugned judgment on the ground that the evidence led by the prosecution did not bring home the guilt of the appellant under Section-376 of the IPC since neither medical evidence nor the testimony of Phulkunwar PW-2 corroborated the prosecutrix. It was further contended that in view of the fact that neither resistance was offered by the prosecutrix during the alleged incident of rape nor any alarm raised and also the fact that upon arrival of wife of the appellant, the prosecutrix did not narrate the incident to her, the possibility that sexual intercourse, if any, was committed by the appellant with the consent of the prosecutrix could not be ruled out. So far as the report of Forensic Science Laboratory relating to presence of semen and human spermatozoa on the saya and vaginal slides of the prosecutrix was concerned, learned counsel for the appellant contended that the prosecutrix being a married woman, the above findings did not conclusively establish the guilt of the appellant under Section-376 of the IPC. Learned counsel for the appellant placed reliance on ***Dilip and another Vs. State of Madhya Pradesh*** reported in A.I.R. 2001 Supreme Court 3049, ***Surjan and others Vs. State of Madhya Pradesh*** reported in A.I.R.-2002-Supreme Court-476, ***Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and another*** reported in ***AIR-2003-Supreme Court-818***, ***Mohan lal Vs. State of Rajsthan*** reported in AIR-2003-Supreme Court-698, ***Sudhansu Shekhar Sahoo Vs. State of Orissa*** reported in AIR-2003 Supreme Court-2136, ***State of Karnataka Vs. Mapilla P.P.Soopi*** reported in

AIR-2004-Supreme Court-85, ***State (Andaman and Nicobar Admn.). Vs. Shyam Raj*** reported in AIR-2004-Supreme Court-266 and judgment rendered by this Court in Cr. Appeal No.927/2005 (***Sanjay Pathak Vs. State of Chhattisgarh)*** in support of the above contentions. On the other hand, Shri Parag Kotecha, Panel Lawyer for the State argued in support of the impugned judgment while placing reliance on ***State of Rajsthan Vs. Biram lal*** reported in (2005)-10-Supreme Court Cases-714.

5. Having heard rival submissions, I have perused the record of the Sessions Case No.103/1989. It is well settled by a catena of decisions of the Apex Court that conviction of the appellant under Section-376 of IPC can be based on the sole testimony of the prosecutrix, if her testimony is natural, inspires confidence and is worthy of credence. Corroboration from medical evidence would be required only as a rule of prudence and not as a rule of law. Testing the evidence led by the prosecution and the testimony of the prosecutrix on the above touchstone, it is found that the prosecutrix had in para-10 of her testimony deposed that although she was working at the house of the appellant since about a year prior to the occurrence, the appellant had never indulged in any such sexual act with her prior to the date of occurrence. She also stated that the appellant never had an eye on her or abused her. It is not disputed that the appellant was also a married person.

6. Testimony of the prosecutrix also shows that soon after the alleged incident of rape, wife of the appellant returned home and

the appellant had opened the door for her. She has admitted that she did not narrate the incident to the wife of the appellant and left the house of the appellant. This conduct of the prosecutrix is quite unnatural.

7. The prosecutrix did not state that at the time of alleged occurrence she raised any alarm. Her testimony also shows that although her hands were free during the alleged sexual assault for the duration of half an hour, she did not resist the sexual act committed by the appellant. She testified about narrating the incident immediately to Phulkunwar PW-2. However this does not find corroboration from the testimony of Phulkunwar PW-2 who had stated that she had found the prosecutrix crying and on being asked the prosecutrix had told her that the appellant had said something to her. It is pertinent to note that she stated that the prosecutrix went with her to the house of the appellant again and told him that she was going to the Police Station. This conduct also appears to be unnatural.

8. In para-10 of her testimony, the prosecutrix has also admitted that her salary for 2 to 3 months was due and on being demanded by her, the appellant had stated that his wife would bring the money from the Village. This has also been stated by the appellant in his examination under Section-313 of Cr.P.C. In view of the fact that the back wages of the prosecutrix were due and were not paid by the appellant and also in the facts and circumstances mentioned above, the possibility that the

prosecutrix falsely implicated the appellant could also not be ruled out.

9. Prosecutrix deposed that the appellant committed rape on her for about half an hour. The prosecutrix was aged about 32 years and was also a married woman. Had she resisted during the sexual act for half an hour, some injuries on her person were likely. If she had raised an alarm during this period, some persons from the vicinity would have arrived. The fact that even on arrival of the wife of the appellant, the prosecutrix quietly left the house without narrating the incident to the wife of the appellant clearly suggests that sexual intercourse, if any, was committed by the appellant with the consent of the prosecutrix. The testimony of Dr.Smt. Shobha Behar PW-1 also did not corroborate the testimony of the prosecutrix in any manner since she did not find any injury either on the person or private parts of the prosecutrix and no definite opinion about rape could be given by her. So far as the presence of semen and human spermatozoa on the saya and vaginal slides of the prosecutrix vide Report Ex.P-10 of the Forensic Science Laboratory is concerned, it does not conclusively establish the guilt of the appellant under Section-376 of the IPC since the prosecutrix is a married woman.

10. Having thus considered the evidence led by the prosecution in its entirety, the following facts emerge:-

(A) No resistance was offered by the prosecutrix during the alleged sexual intercourse committed by the appellant.

(B) No alarm was raised by the prosecutrix during the alleged sexual act.

(C) No injury was found either on her person or her private parts by Dr. Smt. Shobha Behar PW-1.

(D) The prosecutrix did not narrate the alleged incident to the wife of the appellant who had arrived while the prosecutrix was inside the house of the appellant.

(E) Phulkunwar PW-2 did not support the prosecution story.

(F) The good moral conduct of the appellant as admitted by the prosecutrix in para-10 of her testimony and the fact that back wages of 2 to 3 months of the prosecutrix were due and not paid on demand by the appellant on the date of occurrence does not rule out the possibility that the appellant could have been falsely implicated for the alleged offence of rape.

In view of the above facts emerging from the evidence led by the prosecution, conviction of the appellant under Section-376 of IPC and the sentence awarded thereunder by the learned trial Judge deserves to be set aside.

11 In the result, this appeal is allowed. Conviction of the appellant under Section-376 of IPC and the sentence awarded thereunder by the learned trial Judge are set aside. The appellant is acquitted of the charge under Section-376 of IPC. The appellant being already on bail, his bail bonds stand cancelled.

Sdl-
Dilip Raosaheb Deshmukh
Judge